

GUARDIAN AD LITEM SEMINAR

Advocating for the Child's Best Interests In Dependency, Neglect, and Abuse Cases

Excerpted from Kentucky Guardian Ad Litem Training Curriculum developed by Duane Osborne, J.D., Crystal Collins, M.S.W., C.S.W., and Bo McCreary, C.P.C., N.C.C., N.C.S.C. and presented to the Honorable Joseph E. Lambert, Chief Justice of the Kentucky Supreme Court, the Kentucky Guardian Ad Litem Commission and the Administrative Office of the Courts. Edited by Lyn Lee Guarnieri, J.D.

I. INTRODUCTION

The guardian *ad litem* curriculum was developed as a result of a series of recommendations made by various work groups, committees, and agencies which recognized that the Commonwealth was entrusting a very important responsibility—representation of the best interests of children who are before the court as a result of being abused, neglected or dependent—to attorneys who have not been adequately prepared to fulfill that role. The juvenile court process is very different than that of other, more common court processes. In addition, working with a child requires a basic understanding of child development, the dynamics of child maltreatment, and techniques for communicating with children.

The goal of this curriculum is to promote competent guardian ad litem practice within Kentucky's juvenile court system thus working toward achieving permanency for children who enter the foster care system by affording better representation for those children.

II. DEPENDENCY, NEGLECT AND ABUSE: STATUTORY REVIEW

A. District Court Jurisdiction

The Juvenile session of the District Court of each county shall have exclusive jurisdiction of proceedings concerning any child living or found within the county, who has not reached his eighteenth birthday; this includes exclusive jurisdiction of children who are allegedly dependent, neglected or abused. KRS 610.010

B. Legislative Purpose

Children have certain fundamental rights which must be protected and preserved, including but not limited to, the rights to adequate food, clothing and shelter; the right to be free from physical, sexual or emotional injury or exploitation; the right to develop physically, mentally, and emotionally to their potential; and the right to educational instruction and the right to a secure, stable family. KRS 620.010

C. Duty to Report Dependency Neglect or Abuse

Any person (including social workers) who knows or has reasonable cause to believe that a child is dependent, neglected or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Kentucky state police; the cabinet or its designated representative; the commonwealth's attorney or the county attorney; by telephone or otherwise. KRS 620.030

D. Immunity for Good Faith Report

Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. KRS 620.050(1)

Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:

- To law enforcement officials that have a legitimate interest in the case;
- To the agency designated by the cabinet to investigate or assess the report;
- To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600; or
- Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report. KRS 620.050(5)

Photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings.

The person performing the diagnostic procedures or taking photographs or X-rays shall be immune from criminal or civil liability for having performed the act. KRS 620.050(8)

E. Definitions

"Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

- Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
- Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
- Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
- Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
- Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
- Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
- Abandons or exploits the child;
- Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well being.
- Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months. KRS 600.020(1)

"Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child. KRS 600.020

“Emotional injury” means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional. KRS 600.020(24)

“Physical Injury” means “substantial physical pain or any impairment of physical condition.” KRS 600.020(44)

- This is the standard for filing a non-removal Petition, unless “repeatedly inflicted.” (See KRS 620.060(1)(b))
- Removal Petition requires a finding of “serious physical injury.”

“Qualified mental health professional”

- A licensed physician
- A licensed psychiatrist licensed who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
- A licensed psychologist at the doctoral level or certified at the master's level who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
- A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
- A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center. KRS 600.020(47)

"Reasonable efforts" means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home. KRS 620.020(10)

"Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ. KRS 600.020(54)

"Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person. KRS 600.020(55)

"Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law. KRS 600.020(56)

F. Adoption and Safe Families Act of 1997, "ASFA"

- The Adoption and Safe Families Act of 1997 (Public Law 105-89; 111 Stat. 2115) establishes explicitly for the first time in federal law that a child's health and safety must be the paramount consideration when any decision is made regarding a child in the Nation's child welfare system.
- The Adoption and Safe Families Act of 1997 promotes stability and permanence for abused and neglected children by requiring timely decision-making in proceedings to determine whether children can safely return to their families or whether they should be moved into safe and stable adoptive homes or other permanent family arrangements outside the foster care system.

- To avoid unnecessary and lengthy stays in the foster care system, the Adoption and Safe Families Act of 1997 specifically requires, among other things, that States move to terminate the parental rights of the parents of those children who have been in foster care for 15 of the last 22 months.
- First substantive change in the Federal law since the Child Welfare Act of 1980;
- The Child Welfare Act of 1980 required the Cabinet to use “reasonable efforts” to reunify the family in EVERY case;
- ASFA requires reasonable efforts, however, also for concurrent efforts to place child for adoption or permanent guardian.
- The cabinet does NOT have to make “reasonable efforts” when aggravated circumstances exist.

"Aggravated circumstances," means the existence of one (1) or more of the following conditions:

- The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;
- The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;
- The parent has sexually abused the child and has refused available treatment;
- The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or
- The parent has caused the child serious physical injury. KRS 600.020(2)

G. Procedural Issues

Emergency Custody Orders

The court for the county where the child is present may issue an ex parte emergency custody order when it appears to the court that removal is in the best interest of the child and that there are reasonable grounds to believe, as supported by affidavit or by recorded sworn testimony, that one (1) or more of the following conditions exist and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child:

- The child is in danger of imminent death or serious physical injury or is being sexually abused;
- The parent has repeatedly inflicted or allowed to be inflicted by other than accidental means physical injury or emotional injury. This condition shall not include reasonable and ordinary discipline recognized in the community where the child lives, as long as reasonable and ordinary discipline does not result in abuse or neglect as defined in KRS 600.020(1); or
- The child is in immediate danger due to the parent's failure or refusal to provide for the safety or needs of the child. KRS 620.060(1)

Within seventy-two (72) hours of the taking of a child into custody without the consent of his parent or other person exercising custodial control or supervision, a petition shall be filed pursuant to this chapter. KRS 620.060

Contents of Summons

- A dependency, neglect, or abuse action may be commenced by the filing of a petition, by “any interested person.”
- After a petition has been filed, the clerk shall issue and sheriff shall serve, a copy of the petition and summons to the parent or other person exercising parental control, unless their identity or location is unknown, in which case the petition and summons shall be served on the nearest known adult relative.
- The summons shall:
 - Include an explanation of the importance of the petition
 - Emphasize the importance of immediately contacting the court about legal representation and to be advised of the date, time, and place of the proceeding
 - Include written notification that the case may be reviewed by a local citizen foster care review board and the report of the board review shall become part of the court record. KRS 620.070(3)

Temporary Removal Hearing

Unless waived by parent, a temporary removal hearing shall be held:

- Within 72 hours of an emergency custody order;
- Within 10 days of the filing of a non-removal petition;

- The court shall determine if there are reasonable grounds to believe the child would be dependent, neglected or abuse if returned to or left in the custody of his parent or other person exercising parental control;
- Court may allow hearsay evidence for “good cause.” KRS 620.080

Temporary Custody Orders

If, after the temporary removal hearing, the court finds there are reasonable grounds to believe the child is dependent, neglected, or abused the court shall issue an order for temporary removal and shall grant temporary custody to the cabinet or other appropriate person or agency. KRS 620.090

- The cabinet shall use least restrictive appropriate placement available. KRS 620.090(2)
- Temporary custody orders shall not exceed 45 days. KRS 620.090(5)
- The court shall conduct the adjudicatory hearing and shall make a final disposition within 45 days.

Immediate Entitlement

- Any person aggrieved by the issuance of a Temporary Removal Order may file a Petition in Circuit Court for Immediate Entitlement to custody;
- Expeditious hearing shall take place in Circuit Court;
- District Court Orders remain in effect until Circuit Court rules. KRS 620.110

Alternatives to Removal

- If the court orders removal, services are to be provided to parent and child, designed to promote the protection of the child and return of the child, safely to home;
- Cabinet shall develop a “Treatment Plan” for each child designed to meet the needs of the child. KRS 620.130

Adjudication Hearings

- All cases involving children in juvenile court shall be dealt with by the Court, without a jury;
- The general public shall be excluded and only “immediate families or guardians of the parties before the court” are admitted;
- Court may order parent to be present at the hearing or any other proceeding. KRS 610.070

Guardian *ad litem* Entitled to All Records

An attorney representing the child (GAL) shall have full access to all records (except referral source) held by:

- Juvenile Court;
- Law Enforcement;
- Social work agencies; or
- Other record, either public or private, about the child.

Testimony of Child Victim

- Applies to dependency proceedings;
- When a sexual act is alleged to have been committed against a child under the age of 12 years, or if a witness is 12 years or younger, the child can testify out of the presence of the perpetrator;
- Court must find “compelling need” that the child would be unable to reasonably communicate because of emotional distress by Defendant’s presence. KRS 421.350

Adjudication Hearings

- The court shall appoint GAL for child;
- Court shall appoint separate counsel for parent who exercises custodial control;
- Court may appoint separate counsel for non-parent exercising custodial control;
- Court may appoint CASA;
- The adjudication hearing shall determine truth or falsity of the allegations in the petition;
- The Kentucky Rules of Civil Procedure apply. KRS 620.100

Evidence to be Considered

Evidence of the following **shall** be considered by the Court:

- Mental illness of the parent
- Acts of abuse or neglect toward any child;
- Alcohol or other drug abuse that results in an incapacity of the parent to provide essential care;
- A finding of domestic violence and abuse, whether or not committed in the presence of the child. KRS 620.023

Dispositional Alternatives

Court must at Disposition:

- Return child to parent or keep with parent;
- Grant temporary custody to another appropriate person; or
- Commit the child to the cabinet.

Court may also:

- Issue protective orders;
- Order cabinet supervision in-home with additional services. KRS 620.140

Court-Ordered Participation in Child's Treatment

The court may order any parent, guardian or person exercising similar custodial control or supervision of a child referred to the Court, to cooperate and actively participate in such treatment or social service programs which might reasonably be expected to meet the goal of enhancing the best interests of the child. KRS 610.160

Permanency Reviews

- If a child has been committed to the cabinet, the court shall conduct a dispositional review hearing, **at least** every 12 months.
- The court shall address the following areas:
 - Whether the child should be returned to the parents;
 - Whether the child should be placed for adoption;
 - Whether the child should be placed with permanent custodian; or
 - Whether special circumstances require commitment.
- If the cabinet determines that reasonable efforts to reunify the child with the child's parent will not be made, the cabinet shall file a case permanency plan with the court that documents the reasons for not making reasonable efforts.
- The cabinet shall inform the court at least sixty (60) days in advance of the time that the dispositional hearing should be held.
- The court shall notify the child's parent, foster parents, pre-adoptive parents, or relatives providing care, CASA & FCRB of review. KRS 610.125

Permanent Custody

- Grants concurrent jurisdiction with Circuit Court to determine permanent child custody and visitation;
- Where child actually lives with grandparent in a stable relationship, Court may recognize grandparent as having same standing as parent for custody. KRS 620.027

Visitation

- When child is removed from his home, CFC shall establish terms and conditions of visitation with child and parent;
- If parent is dissatisfied with visitation schedule, they may petition the court for review of the visitation schedule;
- Court may find the CFC schedule to be arbitrary or unreasonable. KRS 620.150

H. Other Issues

CASA Defined

- A Court-Appointed Special Advocate or CASA program means a program by which trained community volunteers are provided to the court for appointment in dependency, neglect, and abuse proceedings.
- A Court-Appointed Special Advocate is a volunteer who is trained and supervised through the CASA program and is appointed by the judge to represent the best interests of the child in court. KRS 620.500

Duties of CASA Volunteers

CASA Volunteers:

- Attend all court hearings;
- Submit written report & recommendations;
- Monitor & visit child;
- Participate in treatment planning conference;
- Interview parties;
- Remain actively involved until dismissed. KRS 620.525

Citizen Foster Care Review Boards

- Statute requires each judicial district to establish a citizen foster care review board;

- Each board must have no less than three (3) members, with two (2) being from law, medicine, psychology, social work or education, if possible and shall have one foster parent as far as practicable;
- Members serve for three (3) year terms;
- Local board must meet as often as deemed necessary to carry out their duties but at least four (4) times per year. KRS 620.190

Scope of review of local foster care review board

- Local review board shall review the case of each child placed in to the custody of the cabinet;
- Review shall occur once every six months;
- During each six (6) month review, the board shall review:
 - Past, current, and future status of the child;
 - Efforts or adjustment the parent has made that would make it in the child's best interest to return the child home;
 - Efforts of the cabinet to locate and provide services;
 - Effort of the cabinet or other agencies to facilitate child's return to the home or to find alternative permanent placement.

Duties of State Foster Care Review Board

- Provide training for the local citizen foster care review board members;
- Review and coordinate activities of the local boards;
- Establish reporting procedures and publish annual report.
- Compile data in annual report regarding:
 - How the needs of the children are met;
 - Number of times children are moved and why;
 - Average length of time in care;
 - Sibling visitation;
 - Total number and frequency of reviews.
- Make recommendations to Supreme Court, Governor and Legislative Research Commission regarding how procedures affect permanency for dependent, neglected or abused children. KRS 620.320.

I. DETERMINING WHAT IS IN THE BEST INTEREST OF THE CHILD

A. Why this is important to guardian *ad litem* practice:

- Negative physical and behavioral impact that abuse and neglect have upon children
- Assists in assessing the type, duration, and severity of abuse involved in each specific case
- Understanding the relationship between child and caregiver
- Assists in developing recommendations regarding placement
- Assists in developing recommendations regarding treatment needs

B. Types of Maltreatment

- Physical Abuse
- Neglect
- Emotional Injury
- Sexual Abuse

Physical Abuse

- An act of commission
- Approximately 25% of reported maltreatment in Kentucky
- Physical Indicators may include:
 - Bruises and Welts
 - Burns
 - Fractures
 - Lacerations or Abrasions
 - Abdominal Injuries
 - Head Injuries
- Behavioral Signs of Physical Abuse
 - Less compliant
 - Signs of negativism
 - Unhappy

- Angry, isolated, or destructive
- Aggressive behavior toward others
- Difficulty in developing relationships
- Excessive or complete absence of anxiety about separation from parents
- Inappropriate care-taking behavior toward parents
- Search out attention, favors, food
- Developmental delays
- Poor school attendance
- Arrives early or stays late at school
- Doesn't respond to pain or is hypersensitive to touch
- Characteristics of Caregivers Who Are Physically Abusive
 - Lacks an understanding of child development
 - Lacks knowledge of or belief in alternatives to physical punishment
 - Maltreated as a child
 - Rigid belief in harsh punishments
 - Lack of control/compulsiveness
 - Blames others
 - Low self-esteem

Neglect

- Approximately 60% of reported maltreatment
- Research shows it is at least as damaging to the child as physical abuse
- It is important to determine if the family is experiencing situational or chronic neglect
- Behavioral Indicators of Neglect
 - Failure to thrive among infants
 - Chronic fatigue or hunger
 - Lack of appropriate adult supervision or abandonment
 - Poor school attendance and tardiness
 - Academic overachiever or underachiever

- Forced to beg or steal (food or clothing)
- Excessive child care and housework responsibilities
- "Role reversal" in which the child becomes a parental caretaker
- Parental drug or alcohol use
- Withdrawn or "starved" for adult attention
- Common Characteristics of Caregivers Who Are Neglectful
 - Depressed
 - Lack of parenting skills
 - Consumed with personal needs
 - Shows little interest in the health and well being of child
 - Lacks social supports or the ability to connect with community resources

Emotional Injury

- In general, requires observable impairment that indicates exposure to situation of fear, rejection, isolation, humiliation, debasement or corruption.
- Not quantifiable in Kentucky because emotional injury is not measured as a separate form of maltreatment.
- The most significant long-term impact of all forms of maltreatment is often considered to be the emotional injury that results, rather than the bruises that heal.
- Behavioral Signs of Emotional Injury
 - Distinct emotional symptoms and/or functional limitations
 - Deteriorating conduct
 - Apathy or depression
 - Developmental lags
 - Overly passive or aggressive
 - Overly responsible for other family member
 - Depression, fearfulness or anxiousness
 - Expression of little self-worth
 - Increased anxiety

- Common Characteristics of Caregivers Who Emotionally Injure Children
 - Poorly attached to the child
 - Emotionally unavailable
 - Focused primarily on personal needs
 - Lack of child development issues
 - Uses threats to control the child
 - Harms other family members, pets or other valuable possessions of the child
 - Low self-esteem
 - Constantly demeans the child

Sexual Abuse

- May include exposure, fondling, sexual intercourse, oral or anal sex, exposure to pornography, etc.--any act in which a child is used to sexually stimulate or gratify another.
- Encompasses about 10% of all reported maltreatment.
- Vast majority of children that are sexually abused, are abused by people they know and trust, not strangers.
- Only 25-50% of confirmed victims have any physical evidence.
- It is very common for victims to recant earlier statements.
- Behavioral Signs of Sexual Abuse
 - Extensive knowledge of sexual behavior which is inappropriate for their age
 - Withdrawn and daydream excessively
 - Poor peer relationships
 - Poor self-esteem
 - Seem frightened or phobic, especially of adults
 - Experience distortion of body image
 - Express general feelings of shame or guilt
 - Exhibit a sudden deterioration in academic performance
 - Show pseudo-mature personality development

- Attempt suicide
- Exhibit a positive relationship toward the offender
- Display regressive behavior
- Display bedwetting or soiling
- Engage in excessive masturbation
- Engage in highly sexualized play; become sexually promiscuous

Characteristics of Caregivers Who Are Sexually Abusive

- Likely sexually abused as a child
- May be unusually possessive of the child
- May abuse alcohol or other drugs
- Will rationalize the abuse
- Has poor impulse control
- Socially isolated
- Will engage in various "cover ups"

C. Dependency

- This is a rarely occurring situation.
- Cases of maltreatment should not be “plea bargained” down to dependency to avoid a hearing except in rare situations due to impact on the termination of parental rights process and treatment issues.

D. The Cabinet for Families and Children

The Department for Community Based Services has the responsibility to:

- Investigate allegations of child maltreatment
- Assess the safety of the child
- Provide protective services to families, including the development of case plans designed to resolve issues associated with the maltreatment
- Involve the court when necessary

E. A Definition of Domestic Violence

Intentional, repetitive acts of power and control directed at an intimate partner that destroys the integrity of the mind, body and soul.

F. Impact of Domestic Violence on Children

The effects upon children of witnessing domestic violence:

Research has demonstrated the following: increased anxiety, aggression, depression and temperament problems; less empathy and self esteem; and lower verbal, cognitive, and motor abilities than children who do not witness violence at home (Schechter and Edleson, 1994)

G. Intervening Family Factors

- Substance Abuse
- Mental Health Issues
- Parental Motivation for Change
- Parent's Attitude Toward the Child
- Social Isolation
- Family Stressors

IV. COMMUNICATING WITH CHILDREN

A. Why this is important to guardian ad litem practice:

- Attorneys are trained in oral presentation and the art of logical persuasion; these skills may not be relevant to communicating with children.
- Attorneys must be able to communicate with their client in order to represent them.
- Communication skills that are highly effective with an adult population must be adapted to child clients.
- There is important information regarding linguistic development in children that will assist the attorney in getting the information they need from children.

B. One of the skills you will need as a GAL is the ability to develop empathetic relationships with the children with whom you work. Children involved in the judicial system may feel overwhelmed, confused and intimidated. Children are vulnerable, especially when others do not effectively communicate with them or are not empathetic to their situation and working to help them regain a sense of permanency. For these reasons, it is important for a GAL to develop effective communication skills.

C. Communication Styles

Positive Communication Style

- Reduced anxiety and threat
- Relaxed, comfortable, trustful, respectful, harmonious, warm, psychologically safe atmosphere
- Heightened likelihood that messages will be received
- Heightened likelihood that difficult, sensitive, or even painful subjects will be discussed
- Heightened credibility of the communication from the GAL

Negative Communication Style

A negative communication style creates:

- Hostile, defensive, uneasy, mistrustful, disrespectful, psychologically-threatening feeling
- Reduced motivation or readiness to hear what is being said
- Reduced willingness to agree to meetings
- Inability to let you get near the child if a bad relationship exists

C. Guidelines for Interacting with Children¹

- Treat the Child With Respect
- Understand the Child's Developmental Stage and Abilities
- Respect the Child's Need for Safety
- Respect the Child's Attachment to Parents
- Respect the Child's Need for Security
- Use age-appropriate language and intonation. Do not use leading questions or remarks.
- Ask for examples.
- Be open to what children tell you.
- Formulate appropriate opening statements.
- Make descriptive comments.
- Use attending skills, encouragers, silences, questions and reflections appropriately.
- Give praise and support frequently.
- Avoid critical statements.
- Use simple questions and concrete examples.
- Formulate questions in subjunctive mood (hypothetical) when necessary
 - "If you had a magic wand..."*
 - "If you were the judge..."*
- Be tactful.
- Recognize children's discomfort.
- Use props, crayons, clay and toys to help young children talk.
- Use a sentence completion technique.
 - "If I could tell the judge one thing..."*
- Help children express their thoughts and feelings. Be aware of your own.
- Clarify an episode by recounting it.
 - "Let me make sure I understand what you said. Last week when you visited with your mom she told you that if you didn't tell the judge you lied you will never see her again. Is that right?"*
- Clarify interview procedures for children who are minimally communicative.

¹ Adapted from Sattler, Jerome M., (1998). *Clinical and Forensic Interviewing of Children and Families: Guidelines for the Mental Health, Education, Pediatric, and Child Maltreatment Fields*. San Diego: Jerome M. Sattler, Publisher, Inc.

- Understand and use silence.
- Handle resistance and anxiety by giving support and reassurance.
- Consider the child's age, cultural background, and needs in setting the tempo and length of the interview.

D. Checklist for Interviewing or Questioning Children²

Framing the Event

- ☐ Tell the child your name and what your job is--in non-technical words
- ☐ Help the child become familiar with the surroundings of the interview
- ☐ Tell the child the purpose of your talk, and why it is important, and what will happen afterward?
- ☐ Give the child a chance to ask you questions about the talk
- ☐ Try to establish a common vocabulary for the things you talk about

Using Clear Language

- ☐ Use easy words instead of hard ones
- ☐ Avoid legal words and phrases
- ☐ Don't use words that mean one thing in everyday life but another thing in law
- ☐ Don't assume that because a child uses a word, s/he understands the concept it represents
- ☐ Be as redundant as possible

Asking the Questions

- ☐ Keep your questions and sentences simple. Try for one main thought per utterance

"Now Susie, with respect to the 2nd group of pictures in which you identified previously as showing the people who hurt Doug, were you telling the truth when you said that?"

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- Avoid asking “DUR-X” questions (Ones that begin “do you remember” plus two or more following suppositions)
“Do you remember saying John had the knife when Dave got hurt?”
- When you shift topics and move from the present to the past (or vice versa), alert the child you are going to do so
 Give the child the necessary help in organizing his/her story
“What happened next?”
- Avoid asking the child about abstract concepts like “what is truth?”
 Instead, give everyday, concrete examples and let him/her demonstrate knowledge of truth and lies, right and wrong.
“Lies” vs. “Mistakes”
- Avoid using negatives in questions

Listening to the Answers

- Were the child’s responses answers to your questions? Are you sure?
- If the child’s answers were inconsistent, ask yourself if:
 - You asked the exact same question repeatedly
 - You changed the wording of a question you asked before in their interpretation
 - You are forgetting that children can be very literal of language
“Do you remember”
“You ride on a bus”
“You ride in a car”
 - The child’s processing of language might not be mature
“Did you put your mouth on daddy’s penis?”
“Did Daddy put his penis in your mouth?”
“Move” “Touch”

Global Checks

- Stay in the child’s world by framing your questions in terms of the child’s experience
- Don’t take the child’s understanding of language for granted
- Were you listening to your own language, your own questions?
- Ask yourself before you begin: Am I gathering information or doing therapy?

E. A Few Facts About Children's Language Skills³

- By age 3, grammatical complexity to adult everyday language (200-1000 words)
- By 5-6, language well established and sounds on the surface like adults, BUT
 - Doesn't mean they have achieved mastery
 - There are several late acquisitions
 - Doesn't mean they have mastered all the concepts expressed in language
 - By 10-11, most have the ability to use these relational words in an adult fashion

F. The Keys to Communicating with Children

- Don't treat them like small adults.
- Don't assume you are talking the same language.
- Don't be judgmental.
- Don't be afraid to be creative in connecting with them.

³ Anne Graffam Walker, Ph.D.

V. INTRODUCTION TO ETHICAL RESPONSIBILITIES OF GUARDIAN AD LITEM ADVOCACY

In Kentucky, children are not considered “*sui juris*,” meaning that they do not possess full social and civil rights because they are under a disability. Their disability, being having not yet reached the age of majority, means that children cannot represent themselves in any court in the Commonwealth of Kentucky. A guardian *ad litem*’s obligation is to stand in the child’s place and determine what is in the best interest of this particular child. The guardian *ad litem* is both a fiduciary and a lawyer of the child, and in a special sense the representative of the court to protect the minor. Black v. Wiedeman, Ky., 254 S.W.2d 344 (1953).

When an abuse, neglect, or dependency petition is filed in a District Court in Kentucky, the action is brought in the name of the child. Therefore, the child is specifically a party to the proceeding. The guardian *ad litem* is appointed to defend the case for the child. CR 17.03(2). Because the child is not *sui juris*, the guardian *ad litem* must represent the child’s interests in regards to the petition before the court.

A guardian *ad litem* is both the legal representative for the child as well as the lawyer for the minor. KRS 387.305(5) requires that the guardian *ad litem* advocate for the child’s best interests, rather than simply parroting the child’s wishes.

A. Kentucky Rules Of Professional Conduct

The Kentucky Rules of Professional Conduct are delineated in the Rules of the Supreme Court. Several of these rules and the official commentary following demonstrate how important a guardian *ad litem*’s role is when representing a child.

SCR 3.130(1.1) COMPETENCE

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

COMMENT:[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake;

major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence. [6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education.

SCR 3.130(1.3) DILIGENCE

“A lawyer shall act with reasonable diligence and promptness in representing a client.”

COMMENT: [1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has a professional discretion in determining the means by which a matter should be pursued. . .

[2] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

[3] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client . . . Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so . . .

SCR 3.130(1.4) COMMUNICATION

(a) A lawyer should keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

SCR 3.130(1.14) CLIENT UNDER A DISABILITY

“(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of [minority] age, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”

COMMENT:[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. . .

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. . .

SCR 3.130(3.2) EXPEDITING LITIGATION

“A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”

COMMENT: Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. . .

SCR 3.13(3.5) IMPARTIALITY AND DECORUM OF THE TRIBUNAL

“A lawyer shall not:

- (a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) Communicate ex parte with such a person as to the merits of the cause except as permitted by law; or
- (c) Engage in conduct intended to disrupt a tribunal.”

SCR 3.130(8.3) MISCONDUCT

“It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another. . .

B. Advocating For The Child In A KRS Chapter 620 Court Proceeding

The Kentucky Rules of Professional conduct require that any lawyer who is appointed as a guardian *ad litem* for a child adequately represent the child. Based upon the Rules as delineated above, the GAL has numerous obligations and duties at different stages of the proceedings:

1. Emergency Custody Hearings

- a. Determine if “reasonable efforts” have been made to prevent the child’s removal.
- b. If the child is age-appropriate, arrange for an opportunity to meet the child to answer any questions the child may have about what is going on, as well as for the opportunity to adequately prepare for the case.
- c. Ask for CASA to be appointed if available in your area and if appropriate.
- d. Examine the petition to determine the sufficiency of the allegations. Ask that the petition be amended if ambiguous or unclear.
- e. Make certain that all parties to the action will be represented and are properly before the court.

2. Between The Emergency Removal Hearing And The Adjudicatory Hearing

- a. Open a file.
- b. Make notes when you interview social workers, parents, witnesses, etc. If you are called to be a GAL for the same case at a later time, these notes could be extremely helpful.
- c. TALK TO THE CHILD, if the child is at an age where it is appropriate to do so. Even if the child is not old enough to have a meaningful conversation, it is beneficial to the GAL to meet the child and put a face with the file. It is also

helpful to see the child in a social setting where the individual nature of the child can be observed.

- d. If possible, when a child is removed, attend the five-day conference conducted by the Cabinet involving the parents of the child. If it appears that safety measures could be put in effect, which could make it safe for the child to be returned home, ask that those measures be put into place.
- e. If the child is to testify in court, make certain that the child is as comfortable as possible and understands the process as much as possible. Consider filing a motion to exclude the parents or other persons exercising custody or control of the child from the courtroom, pursuant to KRS 420.350.
- f. If a child needs a mental health professional, request the cabinet to arrange it. If the child has a mental health professional, interview that person to ascertain the child's mental health condition.
- g. Talk to the parents' attorneys, as well as the social worker and the county attorney, to determine whether the entire case or aspects of the case can be resolved through an agreed order or stipulation of facts.

3. Adjudication Hearing

- a. If the child is to testify, make certain that the courtroom is accommodating to the child.
- b. If the child testifies, be alert and object if the child is being badgered or treated poorly by any counsel.
- c. If the child testifies, make certain that age-appropriate language is used when questioning the child.
- d. Determine whether circumstances have changed at the child's home that would make it safe for the child to be returned home. Make certain that the Cabinet is continuing to use "reasonable efforts."
- e. If a continuance is requested, make certain that the request is legitimate and object if it is not.

4. Dispositional Hearing

- a. Make certain that the Cabinet is continuing "reasonable efforts."
- b. Talk to the child's mental health professional for recommendations regarding placement of the child and other issues that the child may have.

- c. Make certain that the cabinet has filed the Dispositional Report and that all parties have received a copy of it. Go over the report, if proper, with your client.

5. Post-Disposition

- a. Make certain that the child has your telephone number and mailing address in the event that he/she has questions.
- b. If the child is still out of the home, attend the six-month case review conducted by the Cabinet.
- c. Consider placing the matter back in front of the Court, through a review, if appropriate.